

H.646

Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

Referred to Committee on

Date:

Subject: Labor; unemployment insurance

Statement of purpose of bill as introduced: This bill proposes to make various changes to the unemployment insurance statutes.

An act relating to unemployment insurance

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 21 V.S.A. § 342a is amended to read.~~

~~§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES~~

~~(a) An employee or the Department on its own motion may file a complaint that wages have not been paid to an employee, not later than two years from the date the wages were due. The Commissioner shall provide notice and a copy of the complaint to the employer by service, or by certified mail sent to the employer's last known address, together with an order to file a response with the Department within 10 calendar days of receipt.~~

~~* * *~~

1 ~~Sec. 2. 21 V.S.A. § 1314a is amended to read:~~

2 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
3 PENALTIES

4 * * *

5 (g) Notwithstanding any other provisions of this section, the Commissioner
6 may where practicable require of any employing ~~units with 25 or more~~
7 ~~employees~~ unit that the reports required to be filed pursuant to subsections (a)
8 through (d) of this section be filed in an electronic media form.

9 Sec. 3. 21 V.S.A. § 1338 is amended to read:

10 § 1338. WEEKLY BENEFITS

11 * * *

12 (d)(1) For benefit years beginning on January 3, 1988 and subsequent
13 thereto, to qualify for benefits an individual must:

14 (1)(A) have been paid in one quarter of his or her base period wages in
15 employment with an employer or employers subject to this chapter which
16 equal at least ~~\$1000.00~~ \$1,000.00; and

17 (2)(B) have been paid in his or her base period additional wages in
18 employment with an employer or employers subject to this chapter which
19 equal or exceed 40 percent of the total wages paid in the highest quarter of his
20 or her base period; and

1 ~~(3)(C) have earned subsequent to the beginning of his or her most recent~~
2 benefit year wages in employment with an employer or employers subject to
3 this chapter which equal or exceed four times his or her weekly benefit amount
4 as determined under subsection (e) of this section for that prior benefit year.

5 (2) The base period wages shall not include any wages paid by an
6 employing unit based on a separation for gross misconduct under subdivision
7 1344(a)(2)(B) of this title.

8 (e) For benefit years beginning on January 3, 1988 and subsequent thereto,
9 an individual's weekly benefit amount shall be determined by dividing the
10 individual's two high quarter total subject wages required under subdivision
11 (d)(1) of this section by 45; provided that the weekly benefit amount so
12 determined shall not exceed the maximum weekly benefit amount computed as
13 provided in this section. ~~The base period wages shall not include any wages~~
14 ~~paid by an employing unit based on a separation for gross misconduct under~~
15 ~~subdivision 1344(a)(2)(B) of this title.~~

16 * * *

17 Sec. 4. 21 V.S.A. § 1340a is added to read:

18 § 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

19 (a) As used in this section:

1 ~~(1) "Full time basis" means that the individual is devoting the necessary~~
2 time as determined by the Commissioner to establish a business that will serve
3 as a full-time occupation for that individual.

4 (2) "Regular benefits" shall have the same meaning as in subdivision
5 1421(5) of this title.

6 (3) "Self-employment assistance activities" means activities approved
7 by the Commissioner in which an individual participates for the purpose of
8 establishing a business and becoming self-employed, including entrepreneurial
9 training, business counseling, and technical assistance.

10 (4) "Self-employment assistance allowance" means an allowance
11 payable in lieu of regular benefits from the Unemployment Compensation
12 Fund to an individual who meets the requirements of this section.

13 (5) "Self-Employment Assistance Program" means a program under
14 which an individual who meets the requirements of subsection (d) of this
15 section is eligible to receive an allowance in lieu of regular benefits for the
16 purpose of assisting that individual in establishing a business and becoming
17 self-employed.

18 (b) The weekly amount of the self-employment assistance allowance
19 payable to an individual shall be equal to the weekly benefit amount for regular
20 benefits otherwise payable under this title.

1 ~~(e) The maximum amount of the self-employment assistance allowance~~
2 ~~paid under this section shall not exceed the maximum amount of benefits~~
3 ~~established under section 1340 of this title with respect to any benefit year.~~

4 ~~(d)(1) An individual may receive a self-employment assistance allowance if~~
5 ~~that individual:~~

6 ~~(A) is eligible to receive regular benefits or would be eligible to~~
7 ~~receive regular benefits except for the requirements described in subdivisions~~
8 ~~(2)(A) and (B) of this subsection;~~

9 ~~(B) is identified by a worker profiling system as an individual likely~~
10 ~~to exhaust regular benefits;~~

11 ~~(C) has received the approval of the Commissioner to participate in a~~
12 ~~program providing self-employment assistance activities;~~

13 ~~(D) is actively engaged on a full-time basis in activities, which~~
14 ~~may include training related to establishing a business and becoming~~
15 ~~self-employed; and~~

16 ~~(E) has filed a weekly claim for the self-employment assistance~~
17 ~~allowance and provided the information the Commissioner prescribes.~~

18 ~~(2) A self-employment allowance shall be payable to an individual at the~~
19 ~~same interval, on the same terms, and subject to the same conditions as regular~~
20 ~~benefits under this chapter, except:~~

1 ~~(A) the requirements of section 1343 of this title, relating to~~
2 availability for work, efforts to secure work, and refusal to accept work, are not
3 applicable to the individual; and

4 (B)(i) the individual is not considered to be self-employed pursuant
5 to subdivision 1301(24) of this title;

6 (ii) an individual who meets the requirements of this section shall
7 be considered to be unemployed under section 1338 of this title; and

8 (iii) an individual who fails to participate in self-employment
9 assistance activities or who fails to actively engage on a full-time basis in
10 activities, including training, relating to the establishment of a business and
11 becoming self-employed shall be disqualified from receiving an allowance for
12 the week the failure occurs.

13 (e) The self-employment assistance allowance may be paid to up to 35
14 qualified individuals at any time.

15 (f)(1) The self-employment assistance allowance shall be charged to the
16 Unemployment Trust Fund.

17 (2) In the event that the self-employment assistance allowance cannot be
18 charged to the Unemployment Trust Fund pursuant to subdivision (1) of this
19 subsection, the allowance shall be charged in accordance with section 1325 of
20 this title.

~~(g) The Commissioner shall approve any program that will provide
self-employment assistance activities to qualified individuals.~~

~~(h) The Commissioner shall adopt rules to implement this section.~~

~~(i) The Commissioner may suspend the Self-Employment Assistance
Program with approval of the Secretary of Administration and notice to the
House Committee on Commerce and Economic Development and the Senate
Committee on Economic Development, Housing and General Affairs in the
event that it presents unintended adverse consequences to the Unemployment
Trust Fund.~~

Sec. 5. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

(a) An unemployed individual shall be eligible to receive benefits with
respect to any week only if the ~~commissioner~~ Commissioner finds that all of
the following requirements are met and the individual:

* * *

(8) Has given written notice of resignation to his or her employer and
the employer subsequently made the termination of employment effective prior
to the date of termination as given in the notice. Provided that the claimant
could not establish good cause for leaving work pursuant to subdivision
1344(a)(2)(A) of this title and was not discharged for misconduct as provided
in subdivision 1344(a)(1)(A) or for gross misconduct as provided in

1 ~~subdivision 1344(a)(2)(B), in no case shall unemployment benefits awarded~~
2 under this subdivision exceed four weeks.

3 * * *

4 Sec. 6. 21 V.S.A. § 1452 is amended to read:

5 § 1452. CRITERIA FOR APPROVAL

6 (a) An employer wishing to participate in an STC ~~program~~ Program shall
7 submit a Department of Labor electronic application or a signed written
8 ~~short-time compensation plan~~ Short-Time Compensation Plan to the
9 Commissioner for approval. The Commissioner may approve an STC ~~plan~~
10 Plan only if the following criteria are met:

11 * * *

12 (6) the Plan certifies that the employer has not laid off employees within
13 three months from completion of a prior STC Plan;

14 (7) the Plan certifies that the STC employer will notify the Department
15 within 24 hours after any layoff of an employee, at which time the
16 Commissioner shall have the right to terminate the STC ~~plan~~ Plan;

17 (7)(8) the identified workweek reduction is applied consistently
18 throughout the duration of the ~~plan~~ Plan unless otherwise approved by the
19 Department. The Plan shall not subsidize seasonal employers during the
20 off-season;

1 ~~(8)(9) the Plan applies to at least 10 percent of the employees in the~~
2 affected unit, and when determined to be applicable by the Commissioner
3 applies to all affected employees of the unit equally;

4 ~~(9)(10) the Plan will not subsidize seasonal employers during the~~
5 off-season, nor subsidize employers who have traditionally used part-time
6 employees or intermittent employment;

7 ~~(10)(11) the employer agrees to maintain records relative to the Plan for~~
8 a period of three years and furnish reports relating to the proper conduct of the
9 ~~plan~~ Plan and agrees to allow the Commissioner or his or her authorized
10 representatives access to all records necessary to verify the ~~plan~~ Plan prior
11 to approval and, after approval, to monitor and evaluate application of the
12 ~~plan~~ Plan;

13 ~~(11)(12) the Plan certifies that the collective bargaining agent or agents~~
14 for the employees, if any, have agreed to participate in the ~~program~~ Program.
15 If there is no bargaining unit, the employer specifies how he or she will notify
16 the employees in the affected group and work with them to implement the
17 ~~program~~ Program once the ~~plan~~ Plan is approved;

18 ~~(12)(13) the Plan describes the manner in which the requirements of this~~
19 section will be implemented and where feasible how notice will be given to an
20 employee whose workweek is to be reduced and an estimate of the number of
21 layoffs that would have occurred absent the ability to participate in the

~~short time compensation program. Short Time Compensation Program and~~

any other information that the U.S. Secretary of Labor determines is

appropriate; and

(13)(14) the employer certifies that the Plan is consistent with employer obligations under applicable State and federal laws.

* * *

Sec. 7. 21 V.S.A. § 1459 is amended to read:

§ 1459. CHARGING BENEFITS

STC benefits paid to an employee shall be charged to ~~his or her STC~~
~~employer's experience-rating records~~ the employer in the base period.

Reimbursable employers participating in the STC ~~program~~ Program shall be assessed for the STC benefits paid their employees.

Sec. 8. REPEAL

21 V.S.A. § 1340a (Self-Employment Assistance Program) is repealed.

Sec. 9. EFFECTIVE DATES

(a) This section, Secs. 1, 2(g) (rulemaking for self-employment assistance program), and 3–7 shall take effect on passage.

(b) Notwithstanding 1 V.S.A. § 214, Sec. 2(a)–(f), (h), and (i) shall apply retroactively on January 1, 2014.

~~(c) Sec. 8 shall take effect on July 1, 2017.~~

Sec. 1. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

(a) An employee or the Department on its own motion may file a complaint that wages have not been paid to an employee, not later than two years from the date the wages were due. The Commissioner shall provide notice and a copy of the complaint to the employer by service, or by certified mail sent to the employer's last known address, together with an order to file a response to the specific allegation in the complaint filed by the employee or the Department with the Department within 10 calendar days of receipt.

* * *

Sec. 2. 21 V.S.A. § 1314a is amended to read:

*§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
PENALTIES*

* * *

(g) Notwithstanding any other provisions of this section, the Commissioner may where practicable require of any employing ~~units with 25 or more employees~~ unit that the reports required to be filed pursuant to subsections (a) through (d) of this section be filed in an electronic media form.

Sec. 3. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

* * *

(d)(1) For benefit years beginning on January 3, 1988 and subsequent thereto, to qualify for benefits an individual must:

(1)(A) have been paid in one quarter of his or her base period wages in employment with an employer or employers subject to this chapter which equal at least ~~\$1000.00~~ \$1,000.00; and

(2)(B) have been paid in his or her base period additional wages in employment with an employer or employers subject to this chapter which equal or exceed 40 percent of the total wages paid in the highest quarter of his or her base period; and

(3)(C) have earned subsequent to the beginning of his or her most recent benefit year wages in employment with an employer or employers subject to this chapter which equal or exceed four times his or her weekly benefit amount as determined under subsection (e) of this section for that prior benefit year.

(2) The base period wages shall not include any wages paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.

(e) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual's weekly benefit amount shall be determined by dividing the individual's two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so

determined shall not exceed the maximum weekly benefit amount computed as provided in this section. ~~The base period wages shall not include any wages paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.~~

* * *

Sec. 4. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) As used in this section:

(1) "Full-time basis" means that the individual is devoting the necessary time as determined by the Commissioner to establish a business that will serve as a full-time occupation for that individual.

(2) "Regular benefits" shall have the same meaning as in subdivision 1421(5) of this title.

(3) "Self-employment assistance activities" means activities approved by the Commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) "Self-employment assistance allowance" means an allowance payable in lieu of regular benefits from the Unemployment Compensation Fund to an individual who meets the requirements of this section.

(5) "Self-Employment Assistance Program" means a program under which an individual who meets the requirements of subsection (d) of this section is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

(b) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under this title.

(c) The maximum amount of the self-employment assistance allowance paid under this section shall not exceed the maximum amount of benefits established under section 1340 of this title with respect to any benefit year.

(d)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions

(2)(A) and (B) of this subsection;

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has received the approval of the Commissioner to participate in a program providing self-employment assistance activities;

(D) is actively engaged on a full-time basis in activities, which may include training related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the Commissioner prescribes.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual; and

(B)(i) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(ii) an individual who meets the requirements of this section shall be considered to be unemployed under section 1338 of this title; and

(iii) an individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed shall be disqualified from receiving an allowance for the week the failure occurs.

(e) The self-employment assistance allowance may be paid to up to 35 qualified individuals at any time.

(f)(1) The self-employment assistance allowance shall be charged to the Unemployment Trust Fund.

(2) In the event that the self-employment assistance allowance cannot be charged to the Unemployment Trust Fund pursuant to subdivision (1) of this subsection, the allowance shall be charged in accordance with section 1325 of this title.

(g) The Commissioner shall approve any program that will provide self-employment assistance activities to qualified individuals.

(h) The Commissioner shall adopt rules to implement this section.

(i) The Commissioner may suspend the Self-Employment Assistance Program with approval of the Secretary of Administration and notice to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs in the event that it presents unintended adverse consequences to the Unemployment Trust Fund.

Sec. 5. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the ~~commissioner~~ Commissioner finds that all of the following requirements are met and the individual:

** * **

(8) Has given written notice of resignation to his or her employer and the employer subsequently made the termination of employment effective prior to the date of termination as given in the notice. Provided that the claimant could not establish good cause for leaving work pursuant to subdivision 1344(a)(2)(A) of this title and was not discharged for misconduct as provided in subdivision 1344(a)(1)(A) or for gross misconduct as provided in subdivision 1344(a)(2)(B), in no case shall unemployment benefits awarded under this subdivision exceed four weeks or extend beyond the date of separation as provided in the employee's notice to the employer.

** * **

Sec. 6. 21 V.S.A. § 1459 is amended to read:

§ 1459. CHARGING BENEFITS

STC benefits paid to an employee shall be charged to his or her STC employer's ~~experience-rating records~~ the employer in the base period.

~~Reimbursable employers participating in the STC program Program shall be assessed for the STC benefits paid their employees.~~

Sec. 6. 21 V.S.A. § 1459 is amended to read:

§ 1459. CHARGING BENEFITS

STC benefits paid to an employee shall be charged to his or her STC employer's experience rating records the employers in the base period. Reimbursable employers participating in the STC program Program shall be assessed for the STC benefits paid their employees.

~~*Sec. 7. REPEAL*~~

~~*21 V.S.A. § 1340a (Self-Employment Assistance Program) is repealed.*~~

Sec. 7. SUNSET

Sec. 4, 21 V.S.A. § 1340a (self-employment assistance program), shall be repealed on January 1, 2017.

Sec. 8. 21 V.S.A. § 1338a is amended to read:

§ 1338a. DISREGARDED EARNINGS

(a) An individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages earned by the individual with respect to such week are less than the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible. As used in this section, "wages" in any one week includes only that amount of remuneration to the

nearest dollar ~~which~~ that is in excess of ~~30~~ 50 percent of the individual's weekly wage, ~~or \$40.00, whichever amount is greater.~~

* * *

~~Sec. 9. EFFECTIVE DATES~~

~~(a) This section, Secs. 1-3, 4(h) (rulemaking for self-employment assistance program), and 5-7 shall take effect on passage.~~

~~(b) Notwithstanding 1 V.S.A. § 214, Sec. 4(a)-(g) and (i) shall apply retroactively on January 1, 2014.~~

~~(c) Sec. 8 shall take effect on July 1, 2014.~~

~~Sec. 9. EFFECTIVE DATES~~

~~(a) This section, Secs. 1-3, 4(h) (rulemaking for self-employment assistance program), and 5-7 shall take effect on passage.~~

~~(b) Notwithstanding 1 V.S.A. § 214, Sec. 4(a)-(g) and (i) shall apply retroactively on January 1, 2014.~~

~~(c) Sec. 8 shall take effect on July 1, 2014.~~

Sec. 9. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the

eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

** * **

(F) The individual voluntarily separated from that employer to accompany a spouse who is on active duty with the U.S. Armed Forces or who holds a commission in the foreign service of the United States and is assigned overseas as provided by section 1344(a)(2)(A) of this chapter.

** * **

Sec. 10. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

** * **

(2) For any week benefits are claimed, except as provided in subdivision (a)(3) of this section, until he or she has presented evidence to the satisfaction of the Commissioner that he or she has performed services in employment for a bona fide employer and has had earnings in excess of six times his or her

weekly benefit amount if the Commissioner finds that such individual is unemployed because:

(A) He or she has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit. An individual shall not suffer more than one disqualification by reason of such separation. However, an individual shall not be disqualified for benefits if the individual left such employment to accompany a spouse who:

(i) is on active duty with the U.S. Armed Forces and is required to relocate due to permanent change of station orders, activation orders, or unit deployment orders, and when such relocation would make it impractical or impossible, as determined by the Commissioner, for the individual to continue working for such employment unit; or

(ii) holds a commission in the foreign service of the United States and is assigned overseas, and when such relocation would make it impractical or impossible, as determined by the Commissioner, for the individual to continue working for such employment unit.

* * *

Sec. 11. EFFECTIVE DATES

(a) This section and Sec. 4(h) (rulemaking for self-employment assistance program) shall take effect on passage.

(b) Secs. 1–3, 4(a)–(g) and (i), and 5–10 shall take effect on July 1, 2014.